HIGH COURT OF UTTARANCHAL AT NAINITAL

Second Appeal No. 160 of 2001
(Old No. 645/1982)

State of U.P. ..... Appellant

Versus

Pt. Mukund Lal Sharma & others ..... Respondents

Dated: 18.8.2004

Hon. Rajesh Tandon J.

Heard Sri Nan Prasad, Standing Counsel for the appellant. None appears for the respondents.

Present second appeal has been filed against the judgment and decree dated 12.11.1981 passed by the Civil Judge, Dehradun in Civil Appeal No. 135 of 1980, arising out of the judgment and decree dated 24.9.1980 passed by the Munsif, Dehradun in O.S. No. 256 of 1979.

The suit has been filed by the plaintiff respondent for declaration that the land in suit should have been recorded to be under the ownership of the plaintiff and the area of land is only 12 acres. The appellate has held that there was a building on the land in suit on the date of vesting. Under Section 9 of the U.P.Z.A. & L.R. Act read with rule 26 frames thereunder, the land in suit stood vested with the plaintiff by the State Government and the said land cannot be vested in the Gram Sabha. The whole Abadi site was recorded as one unit. From

evidence it is clear that the construction was less than 2/3 part of it and the plaintiff in his evidence has proved that the vacant portion of the site was appurtenant land and he is in possession. The claim of the plaintiff, therefore, has been decreed by two courts below and the courts below have recorded findings that such house is in existence since 1946 and has been in existence on 1st July 1952 on the date of vesting in Z.A. & L.R. Act.

Both the Courts below have also relied upon the revenue records while recording findings to that effect. In view of the fact I find no substantial question of law in the appeal. The appeal is, therefore, dismissed. No order as to costs.

(Rajesh Tandon J.)

18.8.2004
*Dhyani